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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,497	03/23/2004	Kenichi Shimazaki	1122.70096	3046

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EXAMINER
SUGLO, JANET L

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/807,497	SHIMAZAKI ET AL.
	Examiner	Art Unit
	Janet Suglo	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _08 September 2006_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-6 and 13-27_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-6 and 13-27_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _06 August 2004_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☒ All　b)☐ Some * c)☐ None of:

　　　　1.☒ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The action is responsive to the Amendment filed on September 8, 2006. Claims

1-6 and 13-27 pending. Claims 1, 5, 16, and 21 have been amended. Claims 7-12

have been cancelled.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   **Claims 1-6 and 13-27** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Smocha et al. (US Patent 6,694,288) in view of Bertram et al. (US

Patent 6,470,464) (hereinafter "Bertram").

With respect to **claims 1 and 21**, Smocha teaches a load monitoring condition

determination method for determining a load monitoring condition for performing load

monitoring of a computer system comprised of one computer or a plurality of computers

(col 3, ln 8-32), wherein the method comprises:

giving a load to the computer system from outside of the computer system (col 3,

ln 49-54);

measuring a response or a throughput outside the computer system while the

load is given to the computer system (col 4, ln 61-64; col 6, ln 38-53);

measuring a resource situation inside the computer system while the load is

given to the computer system (col 6, ln 38-53); and

determining a load monitoring condition used for the load monitoring of the

computer system from the amount of load given to the computer, the results of

measuring the response or throughput and the results of measuring the resource

situation inside the computer system (col 7, ln 56 – col 8, ln 28);

wherein the load monitoring condition includes information, regarding an item

being monitoring, which computer of the computer system and which item of resources

should be monitored and a threshold to be used for monitoring of the monitoring item

(col 11, ln 15-30; col 12, ln 29-49; col 13, ln 3-10).

Smocha does not teach that the threshold value corresponds to a measured

value of the item being monitored. Bertram teaches using a threshold value for an item

being monitored (Bertram: col 11, ln 34-36). It would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the teachings of Smocha to

include the threshold of Bertram because using a threshold will allow the system to

produce warnings to be sent to the user to enable them to improve the computer system

(Bertram: col 3, ln 27-34, col 9, ln 48-56, col 10, ln 42-50).

With respect to **claim 4**, Smocha further teaches the limitations of parent claim 1

wherein determining the load monitoring condition (col 3, ln 8-32):

presenting, to a system administrator, information on the amount of load given to

the computer system, the results of measuring the response or throughput and the

results of measuring the resource situation inside the computer system (col 12, ln 16-39); and

having a part or all of the load monitoring conditions optimum for load monitoring of the computer system selected by the system administrator and setting the selected information as the load monitoring conditions (col 4, ln 55-64; col 12, ln 16-39).

With respect to **claim 5**, Smocha teaches a load monitoring condition determination system for determining a load monitoring condition for performing load monitoring of a computer system comprised of one computer or a plurality of computers, wherein the system comprises (col 3, ln 8-32),;

load generating means for giving a load to the computer system from outside the computer system (Fig. 1: 170; col 3, ln 49-54; col 4, ln 47-54);

external response and throughput measuring means for measuring a response or a throughput outside the computer system while giving the load to the computer system (col 4, ln 61-64; col 6, ln 38-53); and

load monitoring condition judgment support means for determining a load monitoring condition used for load monitoring of the computer system from the amount of load given to the computer system (Fig. 1: 190; col 8, ln 13-17), the results of measuring the response or throughput (col 5, ln 7-11) and the results of measuring the resource situation inside the computer system while giving the load to the computer system (col 6, ln 38-53),

wherein the load monitoring condition includes information, regarding an item being monitoring, which computer of the computer system and which item of resources

should be monitored and a threshold to be used for monitoring of the monitoring item

(col 11, ln 15-30; col 12, ln 29-49; col 13, ln 3-10).

Smocha does not teach that the threshold value corresponds to a measured

value of the item being monitored. Bertram teaches using a threshold value for an item

being monitored (Bertram: col 11, ln 34-36). It would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the teachings of Smocha to

include the threshold of Bertram because using a threshold will allow the system to

produce warnings to be sent to the user to enable them to improve the computer system

(Bertram: col 3, ln 27-34, col 9, ln 48-56, col 10, ln 42-50).

With respect to **claims 6, 22, and 23**, Smocha further teaches the load

monitoring condition judgment support means relates to the load given to the results of

measuring the resource situation inside the computer system (col 3, ln 8-32):

detects a resource item having responded well in conjunction with the load given

and sets the resource item that responded well as the item being monitored (col 3, ln

36-39; col 10, ln 1-5),

determines the threshold as a criterion for monitoring the resource item, by

calculating from the measured response (col 12, ln 7-15) or throughput (col 6, ln 48-53)

and physical limitation (col 6, ln 35-37, ln 54-58).

With respect to **claims 2, 16 and 22**, Smocha further teaches the load monitoring

condition includes (col 3, ln 8-32):

relating the load given from the outside to the results of measuring the resource

situation inside the computer system (col 3, ln 36-39; col 10, ln 1-5);

thereby detecting a resource item having responded well in conjunction with the load setting (col 11, ln 50-62) rendering the resource item that responded well as the item being monitored (col 12, ln 16-23); and

determining the threshold, as a criterion for monitoring the resource item, by any of means of marginal performance calculated from measured response (col 12, ln 7-15) or throughput (col 6, ln 48-53).

With respect to **claims 3, 17, and 24**, Smocha further teaches the limitations of parent claims 2, 5 and 21 wherein determining the load monitoring condition includes: in the case where the results of measuring the response or throughput show the marginal performance, determining the threshold based on the results of measuring the resource situation of the resource item that responded well in conjunction with the load (col 12, ln 7-23).

With respect to **claims 13 and 23**, Smocha further teaches all the limitations of parent claim 1 wherein determining the load monitoring condition includes:

relating the load given externally to the results of measuring the resource situation inside the computer system (col 3, ln 36-39; col 10, ln 1-5);

thereby detecting a resource item having responded well in conjunction with the load setting the resource item that responded well as the item being monitored (col 11, ln 50-62); and

determining the threshold, as a criterion for monitoring the resource item, by physical limitation calculated from the results of measuring the resource situation (col 6, ln 35-37, ln 54-58).

With respect to **claims 14, 18, and 25,** Smocha further teaches the load

monitoring condition determination method according to parent claim 13 as shown

above, wherein determining the load monitoring condition includes:

in the case where the results of measuring the resource situation of the

monitored resource item show the physical limitation, determining the threshold based

on the physical limitation of resource item having responded well in conjunction with the

load (col 6, ln 35-37, ln 54-62; col 11, ln 19-22).

With respect to **claim 20,** Smocha further teaches the load monitoring condition

determination system according to parent claim 5 as shown above, comprising

threshold monitoring means for performing the load monitoring of the computer system

using the determined load monitoring condition (col 11, ln 20-23; col 12, ln 29-39).

With respect to **claim 27,** Smocha further teaches determining the load

monitoring condition including:

presenting, to a system administrator, information on the amount of load given to

the computer system, the results of measuring the response or throughput and the

results of measuring the resource situation inside the computer system (col 11, ln 5-30;

col 12, ln 1-6); and

having part or all of the load monitoring conditions optimum for load monitoring of

the computer system selected by the system administrator and setting the selected

information as the load monitoring conditions (col 9, ln 63 – col 10, ln 10; col 12, ln 29-

32; col 13, ln 3-10).

With respect to **claims 15, 19, and 26**, Smocha does not teach predicting values.

Bertram teaches that if the results of measuring the response or throughput do not show

the marginal performance and the resource determined as the monitoring item does not

show the physical limitation (Bertram: col 5, ln 56-65), predicting the marginal

performance of the response or throughput from the results of measuring the response

or throughput (Bertram: col 10, ln 41-54), predicting the resource situation of the

monitoring item at the predicted marginal performance of the response or throughput

from the results of measuring the resource situation inside the computer system

(Bertram: col 10, ln 55-58), and determining the threshold based on the predicted

resource situation (Bertram: col 11, ln 23-37). It would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the teachings of Smocha to

include the prediction model of Bertram et al. because predicting a resource situation

will allow the system to produce warnings to be sent to the user to enable them to

improve the computer system (Bertram: col 3, ln 27-34, col 9, ln 48-56).

Response to Arguments

4.   Applicant's arguments with respect to claims 1-6 and 13, 14, 16-18, 20-25 and 27

have been considered but are moot in view of the new ground(s) of rejection.

5.   Applicant's arguments filed September 8, 2006 have been fully considered but

they are not persuasive.

Applicant argues that Bertram teaches away from the monitoring system of Smocha; however, Applicant's arguments are not well taken. As the primary reference, Smocha teaches a system and method for automated analysis of load testing results. Smocha teaches simulated the behavior of one or more clients and sends information to and from a server. Smocha further teaches using a threshold for correlation coefficient values (Smocha: col 11, ln 20-22). He does not expressly teach a threshold for individual values. Bertram uses a different method for gathering the same information about a computer system performance (Bertram: col 1, ln 40-48). It is the data gathering and manipulating which is being focused on in the Bertram reference. Bertram uses a threshold value for monitored items (Bertram: col 11, ln 34-36). He further states the advantages of using his system. There is nothing in Smocha that would prevent its combination with Bertram.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Suglo whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janet L Suglo
September 13, 2006

CAROL S.W. TSAI
PRIMARY EXAMINER